

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2004-683

October 27, 2004

BANGOR-HYDRO ELECTRIC COMPANY,
Request for Approval of Request for Bids and
Associated Waivers for Sale of Electric Capacity
and Energy Pursuant to 35-A M.R.S.A §3204(4)
and Chapter 307 of the Commission's Rules
and Regulations

Temporary PROTECTIVE
ORDER NO. 1 Confidential Bid
Materials

On September 30, 2004, Bangor-Hydro Electric Company ("BHE" or the "Company") filed for Commission approval its Request for Bid Package pursuant to Chapter 307 of the Commission's Rules. As part of this proceeding, BHE will be providing confidential information, related to competing bids, the identities of the losing bidders, negotiations with bidders, and BHE's analysis of the bids ("Confidential Bid Information"). This information is considered extremely sensitive and highly confidential both from a business prospective and pursuant to Confidentiality Agreements with bidders. Lack of protection of this information could adversely affect BHE, the other bidders for BHE rights to capacity and energy from BHE's undivested generation assets and generation-related business, and/or other bidding processes currently ongoing or contemplated in the future.

Section 1311-A (l)(A) of Title 35-A of the Maine Revised Statutes grants the Commission the authority to issue protective orders to protect the interests of parties in confidential or proprietary information, trade secrets, or similar matters as provided by the Maine Rules of Civil Procedure, Rule 26(c). On October 1, 2004, the Hearing Examiner issued a similar Protective Order at the request of Central Maine Power Company in its Chapter 307 proceeding, Docket No. 2004-589. The potential harm of disclosure, particularly to ratepayers, outweighs the benefit of its public disclosure.

BHE is willing to produce the Confidential Bid Information on the condition that a protective scheme be implemented similar to that used in the Docket No. 2004-589. Any party at any time can move for a finding that material subject to protection should no longer be protected or that the other party should be provided access to the protected information pursuant to protective provisions. Unless such a motion is granted, however, use of the alleged confidential materials continues to be restricted by the terms of this Protective Order No.1.

Therefore, in order to expedite the provision of this information to the Commission and the Public Advocate and subject to reconsideration in light of arguments by any Intervenor, the Presiding Officer concludes that the limited and revocable protection requested by BHE is warranted under 35-A M.R.S.A. § 1311-A and Rule 26(c) of the Maine Rules of Civil Procedure.

Accordingly, it is hereby

ORDERED

1. That all information related to the Confidential Bid Information shall be considered "Designated Confidential Information" for the purposes of this Order and, until this Order is modified, access shall be limited as described in Paragraph 4 below. Furthermore, all identifying information including, but not limited to, names, addresses, geographic locations, corporate descriptions and any other information that could lead to the identification of competing bidders shall be redacted from all copies of the designated confidential information.
2. That all Designated Confidential Information shall, unless removed from the coverage of this Order as provided in Paragraph 3 below, be and remain confidential. Such Designated Confidential Information shall neither be used nor disclosed for any purpose other than the purposes of preparation and conduct of these proceedings, and then solely in accordance with this Order. No person to whom access to Designated Confidential Information is accorded pursuant to Paragraph 4 of this Order shall disclose or reveal, directly or indirectly, the content of the Designated Confidential Information to others except as provided in Paragraph 4.
3. That the parties to whom such Designated Confidential Information is furnished may challenge designation of such documents or other information as confidential by motion to the Commission and upon reasonable prior notice to the parties and an opportunity for hearing. Upon the entry to an order granting such a motion, the provisions and restrictions of this Order shall cease to bind any party or other person with respect to such documents or information as the Order granting the motion shall expressly and clearly remove from the coverage of this Order.
4. That, unless the Order is modified, access to Designated Confidential Information shall be limited to (i) Commission members and members of the Commission Staff; (ii) the Public Advocate and counsel; (iii) a stenographer or reporter recording any hearing in connection with this proceeding; (iv) counsel, employees, independent consultants or experts retained by the Commission (including both advisory and advocacy staff) or the Public Advocate in connection with this proceeding; and (v) counsel for or any other representative of BHE.
5. That all materials claimed by BHE to be Designated Confidential Information under the terms of this Order shall be clearly marked "confidential" by BHE. In the case of documents, each page of any such document shall be stamped "confidential" in bold lettering in the upper right hand corner of each page~ including the cover letter. Any document or portion thereof not clearly and conspicuously marked "confidential" in bold lettering shall not be protected under the terms of this Order. Faxed materials should be marked as any other document. With regard to other media, diskettes should be marked "confidential" on the outside and, to the extent possible; each file on the diskette should be similarly identified. Any person or party subject to the terms of this Order who

receives unmarked documents or materials which he/she believes BHE intended to be protected by the terms of this Order, and that would have been protected if marked in accordance with this paragraph, shall make a good faith effort to notify BHE of this fact and to avoid use of such documents or materials in a manner inconsistent with protection of such material under this Order. No material covered by this Protective Order shall be faxed to any other person covered by this Protective Order. Any information covered by this Protective Order that is exchanged or provided to any other party shall be provided by hand delivery only to persons who are specifically covered by the terms of this Order.

6. That no copies of Designated Confidential Information provided by BHE shall be circulated to persons other than those persons who are authorized under Paragraph 4 of this Order to obtain Designated Confidential Information. Persons authorized under Paragraph 4 also may take such notes with regard to the Designated Confidential Information as may be necessary solely for the purposes of these proceedings. Such notes shall also be treated as Designated Confidential Information and shall not be used for any purposes other than the preparation and conduct of these proceedings.

7. That where reference to Designated Confidential Information is required in prefiled testimony, if any, or in pleadings, briefs, other legal documents or argument, such reference shall be by citation to title or exhibit number only or by some other non-confidential description. In such circumstances, counsel shall make every reasonable effort to preserve the confidentiality of the supplied Designated Confidential Information in the sealed record. If counsel includes Designated Confidential Information in data requests, deposition questions, pleadings, briefs, other legal documents, or arguments, that portion of the documents or that portion of the transcript of the argument containing Designated Confidential Information shall be maintained under seal.

8. That the restrictions upon, and obligations accruing to, persons who become subject to this Order shall not apply to any Designated Confidential Information submitted in accordance with paragraph 1 of this Order if the Commission rules, after reasonable notice and hearing, that the Designated Confidential Information was publicly known at the time it was furnished or has since become publicly known through no fault of the receiving party.

9. That the Commission may draw upon all Designated Confidential Information in the record in the deliberation of any decision or order that it may issue, but the Commission will avoid public disclosure or the reproduction in its decision of any Designated Confidential Information.

10. That should any appeal of or other challenge to the Commission's decision in this proceeding be taken, any portions of the record that have been sealed in accordance with Paragraph 7 above shall be forwarded to the courts of this State in accordance with applicable law and procedures, but under seal and so designated in writing for the information of the court.

11. That this Order does not preclude any party from (a) objecting under the Maine Rules of Evidence to the admissibility of any Designated Confidential Information produced by BHE, or ~) objecting, on any substantive or procedural ground, to any subsequent data request or other request for information.

12. That BHE will provide to each person having access to Designated Confidential Information a copy of this Order and require each person to agree in writing to the terms hereof prior to obtaining access to the Designated Confidential Information.

13. That Designated Confidential Information made available pursuant to this Order and made part of the record in any proceeding before the Commission shall remain in the possession of the Commission, under seal and subject to the protective requirements of this Order, until the Commission or its authorized presiding officer shall otherwise order.

14. That this Order may be modified on motion of any party or on the Commission's own motion upon reasonable prior notice to the parties and an opportunity for hearing.

15. Copies of Designated Confidential Information and documents, notes and other materials containing or reflecting, directly or indirectly, the Designated Confidential Information, that are in the possession of Commission members, counselor employees of the Commission may be retained by those persons for the purpose of performing those persons' duties and obligations. If retained, the Designated Confidential Information shall be subject to this Protective Order or to a protective order issued in another proceeding in which the Designated Confidential Information is used. If a Commission member, counselor employee of the Commission does not retain the Designated Confidential Information, that person shall destroy it as provided in this paragraph. Within 40 days after the Commission reaches a final decision (i.e., unappealable) in this proceeding, each other party and Commission independent consultants and experts retained by the Commission to whom Designated Confidential Information has been made available shall destroy all documents, notes and other materials containing or reflecting, directly or indirectly, the Designated Confidential Information. Audio, video or other such magnetically recorded materials shall be electronically erased before disposal. Documents shall be shredded.

16. That, notwithstanding paragraph 15 of this Order, the sealed record of this proceeding shall be retained by the Commission and shall continue to remain subject to the confidentiality requirements of this Order until otherwise ordered by the Commission.

Dated at Augusta, Maine this 27th day of October, 2004

BY ORDER OF THE HEARING EXAMINER

James A. Buckley